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President:	Mr. Moeller/Ms. Løj	(Denmark)
Members:	Argentina	Mr. Mayoral
	China	Mr. Guan Jian
	Congo	Mr. Makayat-Safouesse
	France	Mrs. Collet
	Ghana	Mr. Christian
	Greece	Mrs. Telalian
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	Peru	Ms. Zanelli
	Qatar	Mr. Al-Bader
	Russian Federation	Mr. Kuzmin
	Slovakia	Mr. Bartho
	United Kingdom of Great Britain and Northern Ireland	Mr. Llewellyn
	United Republic of Tanzania	Mr. Mwandembwa
	United States of America	Ms. Willson

Agenda

Strengthening international law: rule of law and maintenance of international peace and security.

Letter dated 7 June 2006 from the Permanent Representative of Denmark to the United Nations addressed to the Secretary-General (S/2006/367)

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06-40101 (E)

The meeting resumed at 3.10 p.m.

The President: I wish to remind all speakers, as I indicated this morning, to limit their statements to no more than five minutes in order to enable the Council to carry out its work expeditiously. Delegations with lengthy statements are kindly requested to circulate their texts in writing and to deliver a condensed version when speaking in the Chamber.

I now give the floor to the representative of Sierra Leone.

Mr. Kanu (Sierra Leone): We thank the Danish presidency for convening this important debate. The presence here today of the Danish Minister for Foreign Affairs is an indication of the importance that Denmark attaches to international law issues. In the same vein, we also thank Judge Higgins, President of the International Court of Justice, and Mr. Michel, the United Nations Legal Counsel, for their eloquent contributions to the debate.

My country, Sierra Leone, attaches great importance to international law, the rule of law and justice; hence the request made in June 2000 by my President, Alhaji Ahmad Tejan Kabbah, for the establishment of the Special Court for Sierra Leone. The restoration of the rule of law in a society that has experienced conflict over a period of time is essential for the sustainable resolution of conflict and rebuilding a just society. In recent times, the international community has realized that if we are to prevent conflict or relapse into conflict, the promotion of the rule of law is a top priority.

The Security Council is the principal organ responsible for the maintenance of international peace and security, and that role is intrinsically connected to the promotion of international law and the rule of law in international relations. The nexus between justice and the rule of law is the very foundation for the strengthening of international law and the maintenance of international peace and security.

In the past several years, the Council has established ad hoc tribunals to deal with serious violations of international humanitarian and human rights law. Those ad hoc tribunals have sent a loud and clear message to those who bear the greatest responsibility for heinous crimes that prick the conscience of humankind: impunity can no longer be tolerated. The ad hoc tribunals have been encumbered by a variety of problems that are the direct consequence of their ad hoc character. Nevertheless, they too have contributed in their own way to the enhancement of international peace, regional stability and reconciliation.

The experience of the ad hoc tribunals has made it essentially clear that a permanent international tribunal can enhance the cause of international law, the rule of law and justice. The international community now has a permanent International Criminal Court, and cases are now on its dockets. That, in effect, means that the international community has an effective and independent means of strengthening international law and putting an end to the culture of impunity. The perpetrators of heinous crimes can run, but they cannot hide.

My delegation calls on all those States that have not done so to become parties to the Statute of the International Criminal Court. We believe the Court has sufficient safeguards to convince them to become parties to the 1998 Rome Statute.

While the Security Council has primary responsibility for the maintenance of international peace and security, strengthening international law is not the exclusive domain of this organ; the General Assembly and its organs have an important role to play in that regard. Indeed, the corpus of *opinio iuris sive necessitas* of the Assembly has played a significant role in strengthening international law and contributing to its progressive development and codification. The Assembly has initiated and adopted a number of conventions that have greatly contributed to the strengthening of international law, the rule of law and the maintenance of international peace and security. The Assembly has also enhanced the rule of law in international relations by adopting important resolutions in that regard.

Let me digress a bit and make a plea for the Special Court for Sierra Leone. The Court now has Charles Taylor in its custody. The Court requires financial resources to complete its mandate. I call on the international community to respond positively to the clarion call of the Secretary-General for financial contributions to the Special Court.

The experience of Sierra Leone and other countries emerging from conflict clearly indicates that there is a gap in the international community's response to impunity, especially within a relatively

short time. The Justice Rapid Response initiative is one mechanism proposed by like-minded States — including my country, Sierra Leone — to fill the gaps in the international community's ability to address accountability for genocide, war crimes and crimes against humanity and to ensure that international law, the rule of law and justice play an integral part in post-conflict peacebuilding.

The development and reinforcement of the principles of international law, especially in the realm of transitional justice, have not been accompanied in equal measure by practical assistance to help States or international organizations meet their responsibilities. Indeed, the principle of complementarity, enshrined in the Rome Statute of the International Criminal Court, provides for prosecution by States of crimes covered by the Statute, except where they are unwilling or unable to carry out such prosecutions. I can say that there are States that are indeed willing to prosecute heinous crimes but that do not have the capacity to do so. The Justice Rapid Response mechanism can fill that gap by providing the requisite assistance to such States.

Even though much has been achieved with regard to strengthening international law and the rule of law within and across States, much more remains to be done. The rule of law in international relations calls for respect for the Charter of the United Nations and respect for conventions to which States are parties, and even the resolutions of the Security Council under Chapter VII require compliance.

In conclusion, my delegation calls on the international community, especially the newly established Peacebuilding Commission, to embrace the Justice Rapid Response mechanism as one means of strengthening international law, the rule of law and the maintenance of international peace and security.

The President: I now call on the representative of Egypt.

Mr. Abdelaziz (Egypt): I would like to start by thanking you, Madam President, the Minister for Foreign Affairs of Denmark and your delegation for the initiative to convene this public debate, aimed at enhancing the role of international law in the maintenance of international peace and security. It is quite a challenge to answer all the vital questions raised in your informal paper on this important matter (S/2006/367, annex) during the limited time available for delegations, to which you just referred. Therefore, I will limit my delegation's remarks to a few salient points. Before I proceed, however, I would like to thank the President of the International Court of Justice for her inspiring remarks today. We also express our deep appreciation to the United Nations Legal Counsel for his excellent presentation this morning.

We fully agree, first of all, that the Security Council should improve its capabilities to face the new challenges and threats to international peace and security. That should be done in full and strict adherence to the provisions of the Charter of the Organization and to the various rules and norms of international law, regardless of any political consideration.

Second, the peacebuilding activities of the Security Council, particularly in the context of peacekeeping operations, must be based on the fact that the responsibility to apply laws and regulations should at all times remain with the national authorities of the country concerned, with the full application of the principle of national ownership of peacebuilding activities as one of the principles governing the activities of the Peacebuilding Commission in accordance with General Assembly resolution 60/180, which was adopted without a vote. In that regard, I would like to pay a special tribute to the significant contributions made by Denmark and the brotherly African country Tanzania in facilitating agreement on the establishment of the Peacebuilding Commission.

Third, the role of the Security Council in addressing human rights issues should remain within the parameters of the delicate distribution of competencies and the strict balance of authority among the Council, the General Assembly and its subsidiary bodies, including the Human Rights Council. To argue otherwise would run counter to the wisdom of our leaders, who urged the establishment of the Human Rights Council in the outcome document (General Assembly resolution 60/1) to get rid of selectivity, double standards and politicization.

Dealing with violations — even gross and systematic violations — of human rights is primarily the responsibility of the Human Rights Council, as we agreed in the resolution establishing it. If the Human Rights Council requires enforcement measures against a certain country, the decision to refer the matter to the Security Council should be taken in accordance with the Human Rights Council's rules of procedure. On the

other hand, if the Security Council finds that a particular human rights situation threatens international peace and security, it should seek the intervention of the Human Rights Council and inform the Organization's larger membership before undertaking any enforcement measures. A general debate on the issue, in accordance with the principles of transparency and accountability, would also be highly beneficial so as to take the pulse of the larger membership of the Organization.

Fourth, as the Peacebuilding Commission was established by a resolution of the Security Council and a resolution of the General Assembly, both organs should play an essential role, along with the Economic and Social Council, in stabilizing a situation and in promoting peace and stability. The Security Council should concentrate on achieving the peaceful settlement of all international disputes, without exception and with equal enthusiasm. It should also help other United Nations organs in their efforts to support the national endeavours of the countries concerned so as to consolidate peace and prevent any recurrence.

Fifth, any enforcement mechanism applied by the Security Council should fully respect the principles of the sovereignty and political independence of States, and any encroachment by the Security Council on the competence of the General Assembly or the Economic and Social Council should cease. The issues of human rights, terrorism and disarmament are the main responsibility of the General Assembly. Resolutions adopted by the Security Council on those issues should be limited to cases involving a threat to international peace and security, and such resolutions should be elaborated in close consultation with the wider membership of the Organization. Sanctions must be carefully targeted and justified so as to increase the likelihood of their implementation and enhance their effectiveness. Any decision to resort to military action, or merely authorizing such military action, should be made by the Security Council in consultation with the Organization as a whole, given the potential negative impact on the people of the State concerned and the adverse effects on the region in question and on the international situation as a whole.

Sixth, the role of the International Court of Justice is of paramount importance if the Security Council is interested in strengthening the rule of law. Frequent resort to the Court to render advisory opinions is required, even on the scope of competence of, and the distribution of power between, the General Assembly and the Security Council, or on any other issue under consideration. All of this will enhance the credibility of the Security Council as a principal organ aspiring to adhere to legality. In that regard, the Council should respect the legal and moral values reflected in the Court's judgments and advisory opinions and should be guided by them in dealing with the issues on its agenda.

Seventh and lastly, the good governance to which we all aspire should start with good governance at the international level, in this Organization and by the Security Council, through the full application of the norms of democracy, the principle of equality in relations between States Members of the Organization, regardless of which principal organs they belong to, and, most of all, the full application of the Charter and of the rules and norms of international law in a just, fair and equitable manner.

The President: I thank the representative of Egypt for the kind words he addressed to my delegation.

The next speaker inscribed on my list is the representative of Azerbaijan, to whom I give the floor.

Mr. Mammadov (Azerbaijan): Let me join previous speakers in expressing our thanks and appreciation to you, Madam President, for having convened this debate, the topic of which is of particular interest to my country. We are also grateful to Denmark for having prepared the non-paper containing very valuable and straight-to-the-point reflections about the role of the Security Council in strengthening the rule of law in international affairs.

We would like to express our appreciation to Mr. Michel, the Under-Secretary-General for Legal Affairs, and to Judge Higgins, President of the International Court of Justice, for their valuable contributions.

International law, as a set of universal norms and principles, constitutes the very foundation of inter-State relations. Our ultimate goal today is to achieve peace and security, which cannot be fully attained or guaranteed without respect for the rule of law at both the national and international levels.

In accordance with the United Nations Charter, the Security Council is the principal organ entrusted by the Member States with primary responsibility for the

maintenance of international peace and security. Thus the Security Council is at the forefront of strengthening international law in the maintenance of international peace and security, through its effective application and implementation.

In 1993, when Azerbaijan became the object of military aggression and when its sovereignty and territorial integrity were violated, the Security Council reacted promptly and decisively by adopting four resolutions: resolution 822 (1993), resolution 853 (1993), resolution 874 (1993) and resolution 884 (1993). The Security Council reaffirmed the sovereignty and territorial integrity of Azerbaijan, the inviolability of its international borders and the inadmissibility of the use of force for the acquisition of territory. Each resolution unequivocally demanded the immediate, complete and unconditional withdrawal of the occupying forces from all occupied territories of Azerbaijan and the creation of safe conditions for the return of refugees and displaced persons to their place of permanent residence.

Azerbaijan has yet to see those resolutions of the Security Council implemented, although their provisions established a clear-cut mechanism for monitoring their implementation. In particular, a request was made to the Secretary-General, the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) and the Chairman of the OSCE Minsk Conference to report to the Council on the progress of the Minsk process and on all aspects of the situation on the ground, in particular on the implementation of the relevant resolutions.

Regrettably, none of the fundamental principles of international law affirmed by the Council with respect to the aggression and continued occupation has ever been respected.

Azerbaijan has appealed several times for the fulfilment of the resolutions' demands. In 1994 Azerbaijan requested the dispatch of a United Nations fact-finding team to the occupied territories to verify the status of the implementation of the resolutions. However, that request has gone unanswered.

In 2003 Azerbaijan once again urgently appealed to the Security Council and the Secretary-General to take all necessary steps to ensure compliance with those provisions. The Security Council has at its disposal a wide range of tools to promote compliance with its decisions. The fact that the Security Council did not ensure the implementation of its resolutions has resulted in the prolongation of the conflict, the aggravation of the situation on the ground and the further jeopardization of the peace process. The continued occupation has profound and devastating implications, given that illegal activities such as the exploitation of natural resources and the destruction of historical and cultural monuments have taken place in the occupied territories. Moreover, the illegal transfer of settlers has been carried out for the purpose of changing the pre-conflict demographic situation. All those activities represent grave violations of the norms and principles of international law, in particular international humanitarian law.

Azerbaijan has repeatedly provided information about the illegal settlements, the misappropriation of natural resources and the demolition of Azerbaijani historical and cultural monuments in the occupied territories.

Following the discussions held in the General Assembly on 23 November 2004, conducted at the initiative of Azerbaijan, the OSCE fact-finding mission visited the occupied territories of Azerbaijan from 30 January to 5 February 2005 and confirmed the illegal transfer and settlement of more than 17,000 people.

Despite all the difficulties it has faced and the continued occupation, Azerbaijan has always adhered, and continues to adhere, to the principle of a political settlement of the conflict, on the basis of the relevant provisions of international law, in particular Security Council resolutions and OSCE decisions.

The role of the Security Council in strengthening the rule of law is indispensable, especially when it comes to the prevention and resolution of armed conflicts. Respect for the law and its application is a value we share and our common responsibility. The international order must not be imperilled by the selective application of international law. Justice and the rule of law must not be compromised or held hostage to narrow political interests.

The President: The next speaker inscribed on my list is the representative of Guatemala, to whom I give the floor.

Mr. Briz Gutiérrez (Guatemala) (*spoke in Spanish*): We welcome the initiative taken by your Government, Madam President, to convene today's open meeting, and we would like to thank you for the

information that has been distributed, including the discussion paper prepared for this important debate. I should also like to thank Judge Rosalyn Higgins and Mr. Nicolas Michel for their very relevant contributions to today's discussion.

As far as Guatemala is concerned, any actions taken by the Security Council must be restricted to the mandate conferred on it by the United Nations Charter in the area of maintaining international peace and security. We feel that that mandate does not include any role relating to the codification or development of the rules of international law.

Bearing that in mind, we have drawn lessons based on our own experience, which we feel places us in a privileged position for commenting upon a number of concerns raised in the discussion paper distributed by the presidency. For example, we believe that efforts to integrate the promotion of justice and the rule of law in the work of the Security Council, in particular in the context of peacekeeping operations, should be made from the first moment that the Council begins to consider a conflict or post-conflict situation, and that both elements must be key objectives of peacekeeping operations from the very outset.

We are convinced that no reform effort in the area of the rule of law or the re-establishment of justice can be successful or sustainable if it does not form part of a minimum platform of agreements reached between the various sectors of civil society and the Government. In this respect, when issuing recommendations, planning mandates for missions or designing assistance programmes, the Security Council must carefully consider the specific requirements pertaining to the rule of law in each country.

It should be acknowledged that international cooperation is essential and that the United Nations presence is irreplaceable. That entails not only the daily work of the Security Council and the peacekeeping missions and the support the agencies, funds and programmes can provide, but also efforts to promote an environment within which dialogue, tolerance and understanding can flourish.

Clearly, it is easier to achieve reconciliation in the context of economic well-being than in one in which there is not enough to go around. It is also clear that in order to bring about true reconciliation, the institutions that underpin the entire democratic society must be further strengthened. In that way, the progress made in the implementation of any agreement will be the outcome of internal efforts, complemented in a significant manner by the role of the Security Council and the international community, which must always be one of solidarity and not of replacement.

On this particular point, we regret the lack of the report on the implementation of the proposals made by the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies that was requested in the presidential statement of 6 October 2004 (S/PRST/2004/34). We believe that such a document would have been a very useful tool as we seek to respond to the various concerns being raised today.

Furthermore, we believe that it is important to remain aware that in many cases expectations are high and that there is therefore a tendency to set goals that are overly ambitious, that do not take account of the fact that progress is not linear in nature and that, on occasion, lack of progress in certain areas may undermine other progress.

In this context, we believe that the Peacebuilding Commission can assist the Security Council, in particular when it comes to evaluating progress and assessing the various factors that may influence its development, such as the nature of the underlying conflict and the identification of vulnerable groups such as indigenous peoples, girls and boys, the situation of and the role played by women, the impact of peace agreements on the rule of law, and the diverse traditions that may coexist within a specific country and that might affect the performance of the justice system and the adaptation of the legal framework of a country.

Concerning the possibility of developing policies for peacekeeping operations with regard to gaps in the rule of law, we believe that we should proceed cautiously, as the body that is responsible for designing policies in that area is the United Nations Special Committee on Peacekeeping Operations.

It is paramount that we maintain the coherence of the United Nations system. We believe that the Security Council must focus on ensuring better coordination in the implementation of policies and must further promote the relationship between those who plan, direct and administer peacekeeping operations and those who implement the mandates of those operations, in order to improve them. We believe

that we should await the outcome of the recent request by the Special Committee to the Secretariat for an evaluation of experience gained in the promotion of the rule of law, of the options on possible rule-of-law strategies for peacekeeping operations, both current and future, and of potential human and material resource needs to support peacekeeping operations in the areas of legal, judicial and penal reform.

We would like to congratulate Japan for the impetus that it has given to the Security Council Working Group on Peacekeeping Operations. That is an underused body, which should, indeed, be utilized further in future in order to implement and extend mandates that seek to strengthen activities relating to the rule of law.

Terrorism is another area relating to peacekeeping and international security, and the Security Council must ensure that the fight against terrorism is carried out within the rule of law. Only in that way will be able to protect norms of international value that prohibit terrorism and — while ensuring full respect for human rights — alleviate the conditions capable of giving rise to cycles of terrorist violence and mitigate the grievances and resentments that can act as a breeding ground for terrorists.

We therefore wish to reaffirm our full support for the provisions of paragraph 109 of the 2005 World Summit Outcome, which called on the Security Council to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.

We welcome the partial review of guidelines undertaken by the Committee established pursuant to resolution 1267 (1999), which we believe is a step in the right direction. Furthermore, we look forward with interest to the proposals to be issued by the Office of Legal Affairs in the area of targeted sanctions in order to ensure that such sanctions are neither discriminatory nor arbitrary in nature.

Finally, for there to be reconciliation, we cannot overestimate the importance of strengthening the rule of law and the administration and implementation of justice. In many countries, as a legacy of conflict, there remain many illegal bodies and clandestine mechanisms that undermine human rights. In this regard, the Government of Guatemala is making a special effort to fulfil its commitments by urging the establishment of an international mechanism that would act, in accordance with national legislation, to investigate and dismantle such clandestine mechanisms by identifying and bringing to justice those responsible.

Before concluding, it would be remiss of me not recall the special efforts made by Ambassador Løj as Chairman of the Counter-Terrorism Committee in helping States to submit their reports and to implement measures against terrorism.

The President: The next speaker on my list is the representative of Canada, to whom I give the floor.

Mr. Rock (Canada): I am pleased today to be speaking on behalf of the delegations of Canada, Australia and New Zealand. We welcome the opportunity to speak on the issue of strengthening international law. We are grateful to the Danish presidency of the Council for having chosen this topic as the theme for today's meeting.

As reaffirmed by the Millennium Declaration (General Assembly resolution 55/2), the rule of law is of course the essential framework for advancing human security and prosperity around the world, and it forms the basis for relations among States. The rule of law requires not only the elaboration of obligations but also their implementation. As the Secretary-General noted in his report entitled "In larger freedom" (A/59/2005), without implementation our declarations ring hollow. Nowhere is the discrepancy between law and implementation and between words and action more regrettable than when it comes to the suffering of civilian populations.

Our heads of State or Government recently took a step to narrow that discrepancy and to fill a critical normative gap in international law on the need to protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity, when they adopted the concept of the "responsibility to protect at the world summit last September. The Security Council has followed up by adopting by consensus resolution 1674 (2006), on the protection of civilians in armed conflict, the first explicit Security Council endorsement of the responsibility to protect.

Canada, Australia and New Zealand believe that the Council, having endorsed the concept of the responsibility to protect, must put that concept into credible and consistent practice. The Council must be

timely in its engagement and vigilant in its monitoring, and it must have the political will, when non-coercive options are inadequate, to have full recourse to its Article 42 powers, in order to provide protection to civilian populations at grave risk. Where the Council authorizes such action, we believe it should ensure that any operation is designed to maximize the prospects of success and that the use of military force is proportional to the threat.

(*spoke in French*)

We also believe that, in order to establish lasting peace in any conflict, it is important to bring to justice the perpetrators of serious international crimes. The delegations of Canada, Australia and New Zealand are proud to have taken a leading role in establishing and supporting responsible and fair mechanisms, such as the International Criminal Court, to ensure individual accountability for such crimes. But the Security Council also has an important role to play in efforts to end the cycle of impunity.

We welcome the action taken by the Security Council last week to facilitate the request of the Special Court for Sierra Leone to have Charles Taylor's trial transferred to The Hague. We are also grateful to the Governments of Liberia, Nigeria and Sierra Leone for their cooperation, thanks to which Charles Taylor will appear before the Special Court for Sierra Leone; to the Government of the Netherlands for its agreement to host the trial; and to the Government of the United Kingdom for agreeing, subject to the approval of its Parliament, to allow Charles Taylor serve his sentence on its territory in the event he is convicted.

(*spoke in English*)

The delegations of Canada, Australia and New Zealand support efficient and effective sanctions regimes that are appropriately targeted at individuals and groups whose actions should be subject thereto. We agree that recent efforts to put in place due-process guarantees, including those related to the listing and delisting of individuals, are essential to the credibility of targeted sanctions regimes. We also commend the Council's attention to the guidelines developed by the Office for the Coordination of Humanitarian Affairs on the humanitarian impact of sanctions.

At the same time, we contend that sanctions must be monitored and implemented effectively. The international community must know more about the trade in natural resources that fuels conflicts, and about the trafficking, financing and transportation of weapons in violation of arms embargoes. It is our view that, to that end, expert panels and other monitoring mechanisms should be improved and strengthened. The international community must have the will to act on the information that is generated by those mechanisms.

The rule of law is an essential element in re-establishing effective and stable governance in countries emerging from conflict. It will therefore be among the priorities for the Peacebuilding Commission, which will convene its historic inaugural meeting tomorrow, 23 June. The delegations of Canada, Australia and New Zealand wish to recognize and to salute the crucial role played by the delegations of Denmark and Tanzania in the hard work needed to create the Peacebuilding Commission. We imagine to what extent the inaugural meeting tomorrow must produce feelings of pride and accomplishment for those delegations.

I conclude by observing that the rule of law will take hold only if the international community, through the individual and collective efforts of States, is willing to follow through with the consistent implementation of the international legal norms and standards to which we have committed ourselves, many of which found their very birth here at this table. Our commitment must extend beyond our own individual responsibility to implement such norms, to our collective responsibility to assist those developing States that face real, practical challenges in achieving full implementation.

The President: I thank the representative of Canada for his kind words addressed to my delegation.

The next speaker inscribed on my list is the representative of Liechtenstein, on whom I now call.

Mr. Barriga (Liechtenstein): Liechtenstein warmly welcomes your initiative, Madam President, to hold an open debate on the issue of strengthening international law. In our view, the work of the United Nations in that area must be strongly reinforced. It was in that spirit that Liechtenstein, together with Mexico, recently submitted a request to include the item "The rule of law at the international and national levels" in the agenda of the General Assembly. While the General Assembly is the appropriate place for a broad discussion and recommendations on how the United

Nations can strengthen the rule of law, the Security Council also has an important role to play in that respect.

In our view, the best way for the Security Council to promote international law and the rule of law is to lead by example. During this debate we do not want to venture into the legal question of the extent to which the Council is bound by rules of international law. We would, however, submit that it is a wise policy choice for the Council to respect and promote international law, in particular in the following four areas.

The first area has to do with respecting human rights when taking action that has a direct impact on the rights of select individuals. That applies most prominently in the area of those targeted sanctions that go beyond a specific country situation and are open-ended and preventive in nature, such as the sanctions against the Taliban and Al-Qaida. Procedural rights, such as the right to be heard and the right to review, serve the main purpose of ensuring that the persons listed do indeed belong on a given list. Improving the accuracy and credibility of the lists in turn facilitates implementation by Member States. Once an accurate listing and delisting procedure is in place, those rightfully listed will still enjoy a number of substantive rights, which are mainly addressed by what are at present called humanitarian exemptions.

There is today a widely shared perception that the Council must urgently improve the procedural rights of listed persons and entities. Under the current guidelines, a listed person merely has the right to ask the State of residence or citizenship to ask the relevant committee to revoke the listing. The right to ask, however, without the right to any kind of response, is not a procedural right. It is merely a reflection of the right to freedom of expression and does not satisfy basic guarantees of due process.

Secondly, as to respecting its "constitution", it is the United Nations Charter which, similar to a national constitution, determines the competences and the division of work between the main organs. The Security Council has in recent years continuously expanded its activities, in particular in addressing terrorism as a threat to international peace and security. We do appreciate and agree with the active role taken by the Council in many of those areas. At the same time, such activities must always be based on a clear Charter competence and they should not be undertaken at the expense of the balance between the main organs. The draft resolution on the working methods of the Security Council, submitted to the General Assembly by my country, together with Costa Rica, Jordan, Singapore and Switzerland, is an attempt to strengthen that balance. The Security Council should be particularly sensitive to the General Assembly's prerogatives as the United Nations prime legislative organ.

Thirdly, with respect to cooperating with international legal bodies, in particular the International Criminal Court (ICC), the Security Council has in the past been actively engaged in the fight against impunity for the worst crimes of concern to the international community, mainly using an ad hoc and selective approach, but setting important precedents. Today, the world possesses a legal tool of a permanent nature and universal aspiration: the International Criminal Court. The Council has already used the ICC as a tool in dealing with conflicts by referring the situation in Darfur to the Prosecutor of the ICC. We would like to encourage the Council to continue to consider the ICC as a policy option, where appropriate. Referrals to the ICC must, however, be accompanied by sustained political support by the Council through all phases of the judicial proceedings and must, in some situations, be accompanied by other substantive measures.

Fourthly and finally, with regard to promoting both peace and justice in post-conflict situations, the Security Council has fully acknowledged the vital importance of promoting justice and the rule of law in post-conflict societies. The Peacebuilding Commission is also expected to devote much attention to that issue. While we appreciate the progress at the conceptual level, more must be done to increase the operational activities in that area. The further strengthening of rule of law components in peacekeeping missions is one important element in that regard.

Furthermore, the Council should at all times underline that what is sometimes called the "peace versus justice" dilemma may be a dilemma for those having committed atrocious crimes, but not for the international community. There can be no permanent amnesties for genocide, crimes against humanity and war crimes. The possibility of amnesties must effectively disappear as a bargaining option for such criminals, just as much as they cannot request that the clock be turned back. Each ratification of the Rome

Statute of the International Criminal Court represents a step towards the worldwide eradication of that option. That in turn relieves Governments and other actors negotiating peace agreements from the pressure to cave into demands for amnesty, as they cannot promise what international law effectively prohibits. Both the Security Council and the Secretary-General, in their activities aimed at preventing and ending conflicts, should continue to strengthen that important principle.

In closing, we would like to thank you again, Madam, for your leadership in bringing this issue to our attention, and express our hope that the Council itself will also fully live up to its role as a prime stakeholder in the promotion of international law and the rule of law.

The President: I now give the floor to the representative of Switzerland.

Mr. Baum (Switzerland) (*spoke in French*): I would like to thank you, Madam, for organizing this open debate and for the excellent discussion paper on which we will base this debate.

I will focus my statement on three of the topics you raised in your paper: the promotion of the rule of law, ending impunity for international crimes, and the United Nations sanctions regimes.

According to the United Nations Charter, the General Assembly is responsible for the codification and progressive development of international law. We therefore support the recent initiative of Liechtenstein and Mexico requesting the inclusion on the agenda of the General Assembly of an item on the rule of law at the national and international levels. Switzerland intends to contribute in a substantive manner to the discussion of that topic within the Sixth Committee. We expect this discussion to help clarify the notion of rule of law and to lead to concrete measures for promoting that concept at the national and international levels, without being limited solely to conflict and post-conflict situations.

As one of the principal organs of the United Nations, the Security Council has important responsibilities with regard to the promotion of the rule of law. On the one hand, the Council must respect the rule of law in its own actions at all times, and on the other, we expect the Council to promote the rule of law in all areas of its activities. I would like to mention just two areas in which the Council can contribute practically to promoting international law.

First, it can adopt a set of principles on the issue of authorizing the use of force, as suggested in the Secretary-General's report "In larger freedom" of March 2005. Secondly, it can recognize the responsibility of each individual State to protect its populations against genocide, war crimes and crimes against humanity.

With regard to the question of human and financial resources available within the United Nations for the promotion of the rule of law, Switzerland strongly advocates increasing the resources allocated to the Office of Legal Affairs, whose current capacities are no longer commensurate with the importance now attached to the notion of the rule of law and do not meet the needs of activities to promote the rule of law, in particular at the operational level.

Concerning the second area of today's debate, the fight against impunity, I would like to stress first of all that most of us have come a long way over the past few years towards understanding the essential fact that ending impunity for international crimes is a major factor in post-conflict reconstruction and peacebuilding. Nevertheless, unfortunately, there still are times when we create false dilemmas in that we continue to see justice and peace in opposition to each other, with the result that the national and international institutions of criminal justice do not yet receive all the necessary support on the ground.

As one concrete measure to improve that situation, we suggest compiling a set of rules and best practices in the area of fighting impunity and making them available to mediators involved in peace processes. That would help to avoid the occurrence of unnecessary tensions between peace negotiations and the fight against impunity.

Concerning the question of sanctions regimes, in late May we had the opportunity, on behalf of Germany, Sweden and Switzerland, to submit to the Security Council the conclusions and recommendations of a study on strengthening targeted sanctions through the creation of clear and equitable procedures. In the interests of time, I shall not repeat what we have already stated before the Council. Greater detail can be found in the written text of my statement.

I shall limit myself here to repeating that various improvements must be undertaken and that, in the opinion of the Swiss Government, the right to an effective remedy requires a review system with an independent and impartial authority that would at least be able to issue recommendations to the relevant sanctions committees.

The President: I shall now give the floor to the Permanent Observer of Palestine.

Mr. Mansour (Palestine): The delegation of Palestine expresses its appreciation for the convening of this important open debate on a topic that is very timely and relevant for the Security Council: "Strengthening international law: rule of law and the maintenance of international peace and security". We express our appreciation to Denmark for the discussion paper it has prepared to help guide this debate (S/2006/367, annex), which raises many relevant issues and questions of concern to which the Security Council should give serious consideration in the conduct of its work, as it strives to carry out its responsibilities under the Charter of the United Nations. We would also like to welcome the President of the International Court of Justice (ICJ) and the United Nations Legal Counsel and to thank them for their valuable interventions.

The issue of strengthening international law and the maintenance of international peace and security is clearly of importance to the entire international community. It is an issue of particular concern to us, as the question of Palestine has consistently been on the Security Council's agenda since the inception of the United Nations and remains a question of which the Council is seized, for it tragically remains unresolved after the passage of several decades.

As appropriately noted in the discussion paper, the Security Council has the authority to promote the peaceful settlement of disputes and to take steps to ensure compliance with international law. In terms of the question of Palestine specifically, the Council has exerted repeated efforts, through its debates and, more important, through the adoption of dozens of resolutions, to bring about respect for the relevant rules and principles of international law aimed at ultimately securing a peaceful resolution to the Israeli-Palestinian conflict. Yet, for various reasons, including lack of follow-up and of implementation of its resolutions, and excessive use of the veto at critical junctures, the Council has regrettably been unable to effectively exert its authority with regard to this conflict.

While, since 1967, the Security Council has adopted more than 40 resolutions specifically on the situation in the occupied Palestinian territory, including East Jerusalem — 27 of which, for example, reaffirm or recall the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 — the Council has been unable to take the action necessary for implementation of those resolutions and thus for bringing about compliance by Israel, the occupying Power, with its obligations under international law, including humanitarian law and human rights law.

In that regard, Israel's policies and practices against the Palestinian people under its occupation since 1967 and until the present have included not only systematic human rights violations, but acts constituting grave breaches of the Fourth Geneva Convention under its article 147 — that is, war crimes. These have included, but not been limited to: military raids and attacks; excessive and indiscriminate use of force against civilians, including children and women; extrajudicial executions; wanton and deliberate destruction of property, including homes; confiscation of land; construction of colonial settlements and transfer of the occupying Power's civilians to the occupied territory; construction of a wall besieging and isolating civilians in walled enclaves; arrest, detention and imprisonment of thousands of civilians, including minors; and collective punishment of the entire civilian population, including by means of severe restrictions on freedom of movement.

In a situation such as this — one in which violations and grave breaches of international law are being relentlessly committed and the perpetrators are not being held accountable and continue to defy the law with impunity — the unfortunate result is the weakening of international law, giving rise to accusations of double standards in the implementation of the law, and the undermining of the credibility of those institutions entrusted with implementing the law. The perpetuation of such situations is clearly harmful not only to those civilian populations subjected to such violations, but also to the international system itself. In the case of Palestine, the fostering of this culture of impunity by appeasement of the occupying Power or by ignoring its incessant violations against the civilian population under its occupation has not only

aggravated the situation by failing to bring about an end to the violations, including an end to Israel's belligerent military occupation itself, but has also prolonged a conflict that has caused so much suffering, loss and hardship for the Palestinian people, as well as for the entire region, whose stability and security is under constant threat as a result of the ongoing occupation.

Appropriate measures in accordance with the purposes and principles of the Charter should be taken to remedy the situation in the interest of upholding and strengthening the rule of international law and promoting peace and security in the world. In that regard, it is clearly in the interest of the international community to exert all efforts necessary for securing a peaceful settlement of the Israeli-Palestinian conflict as well as of the Arab-Israeli conflict as a whole, on the basis of international law and the resolutions of the United Nations.

The Security Council, in accordance with its authority and responsibilities under the Charter, should play a leading role in that effort. We firmly believe in the authority and the ability of the Security Council to do so and in the legitimacy and rule of international law. It is our strongest hope that one day soon these efforts will become a reality and will ultimately allow for peace, justice and security to become a reality in our part of the world.

At the same time, we stress the importance of the role of the General Assembly, in accordance with the Charter, in the progressive development of international law, in conjunction with the role ascribed to the Security Council for that purpose. With regard to the question of Palestine, we believe that the Assembly's efforts have definitely contributed to the promotion and strengthening of international law, including, for example, by its use of the International Court of Justice. In December 2003, the Assembly requested the ICJ to urgently render an advisory opinion on the legal consequences arising from the construction by Israel, the occupying Power, of a wall in the occupied Palestinian territory, including East Jerusalem, "considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions" (*General Assembly resolution ES-10/14, the operative para.*). It was on that clear basis of international law that the Court examined the situation and presented its findings in its advisory opinion of 9 July 2004.

In its entirety, the advisory opinion constitutes a comprehensive and authoritative determination by the ICJ of the applicable rules and principles of international law, including humanitarian and human rights law, and the specific legal obligations by which Israel, the occupying Power, is bound under international law. The Assembly appropriately followed up the Court's advisory opinion by acknowledging it, demanding that Israel comply with its legal obligations as mentioned in the opinion, and also calling upon all United Nations Member States to comply with their legal obligations.

In this regard, it is imperative to recall that the Court, in paragraph E of the dispositif, also determined that

> "The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion". (*A/59/4, para. 246*)

Unfortunately, the Security Council has to date remained silent on the issue of the unlawful construction of the wall in the occupied Palestinian territory, including East Jerusalem, has not acknowledged or utilized the ICJ's advisory opinion in that regard, and has not taken any action to bring an end to this illegal situation, which is destroying the territorial integrity and contiguity of the Palestinian territory, exacerbating the dire economic, social and humanitarian conditions of the Palestinian civilian population and seriously jeopardizing the prospects for the achievement of a peaceful settlement of the Israeli-Palestinian conflict based on a two-State solution, international law, United Nations resolutions and the Arab peace initiative.

It is not too late, however, for the Security Council to use its authority to address this issue and to undertake the appropriate measures for bringing an end to Israel's violations and grave breaches and for salvaging the prospects of reaching a peaceful settlement.

In conclusion, by undertaking such an effort, the Council would be actively fulfilling its Charter

responsibilities on the basis of legal mechanisms in unison with the other organs of the United Nations, and would also be making a major contribution to strengthening an international order based on legal principles. Moreover, that would reaffirm and reassert the important role that the Security Council should rightfully play in the search for a just, lasting, comprehensive and peaceful settlement of the Israeli-Palestinian conflict and in the maintenance of peace and security in the Middle East.

Our deepest hope is that the Council, in the light of this important debate and of the many significant issues it has brought to the forefront, will soon set an appropriate course of action to undertake its responsibilities vis-à-vis the question of Palestine, thus upholding and strengthening the rule of law and promoting peace and security for both the Palestinian and Israeli peoples as well as for the Middle East region as a whole, and beyond.

The President: The next speaker is the representative of South Africa, to whom I give the floor.

Mr. Kumalo (South Africa): Allow me at the outset, Sir, to congratulate you on your assumption of the presidency of the Security Council for the month of June 2006.

Any credible debate on the role of the Security Council in strengthening international law, the rule of law and the maintenance of international peace and security ought to begin with an assessment of the performance of the Security Council itself. The Security Council bears the primary responsibility for the maintenance of international peace and security and for saving succeeding generations from the scourge of war. The question that therefore arises is whether the Security Council, in its current form, is representative of the United Nations membership and is willing and able to carry out its Charter responsibilities.

When one considers the Security Council's performance in places like Rwanda and Darfur, the results are clearly less than satisfactory. On the other hand, the Council has helped to bring some of those accused of war crimes and crimes against humanity in Sierra Leone, Liberia, Rwanda, the former Yugoslavia and elsewhere to trial. The Council has also helped to strengthen State institutions in a number of conflict-afflicted societies and has played a constructive role in promoting national reconciliation, judicial and security-sector reform and political inclusiveness in those societies. However, the Security Council's partisan performance in the Middle East and the perception that some are above the law in the so-called war on terrorism is a serious indictment of this body.

The Security Council's mixed track record and the erosion of its credibility suggest that there is clear room for improvement. Indeed, if the Council is to realize its full potential to strengthen international law and to help instil the rule of law, comprehensive reform would be required, reform that addresses both its composition and its working methods. In particular, developing countries would have to be brought into the Council's decision-making process through inclusion in the permanent membership category. A closer working relationship between the Security Council and the African Union's Peace and Security Council would also be required.

The replacement of the Commission on Human Rights by the Human Rights Council is a significant reform that has placed the United Nations on a firm footing to protect all human rights. It is significant that the Human Rights Council was created as an organ of the General Assembly, which is the only truly representative body within this Organization. Member States should now participate actively and constructively in the new body to mould it into an institution that will become the prime defender and promoter of human rights worldwide. That is best achieved by reducing the politicization of human rights issues and the selectivity with which they are currently addressed.

The world is placing its faith in the new Peacebuilding Commission, which is tasked with helping promote social progress and better standards of life in post-conflict societies. That institution may help to foster the conditions in which the rule of law might be re-established and thereby prevent future conflicts. However, the suggestion that the Peacebuilding Commission can assist only countries that are not on the agenda of the Security Council would gravely limit its ability to help those that require its assistance before it has even become fully operational.

During the 2005 world summit, Member States recognized the inherent responsibility that exists to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This fundamental reaffirmation of the dignity and worth of

the human person and the equality of races, cultures and genders must now be followed by action.

The people of Darfur and the people of Palestine are among those who look to the Security Council to protect them from the crimes that are currently being inflicted upon them with impunity. They, like all others, deserve justice and have an inalienable right to live in freedom from attacks.

For this reason, it is important that the success of the reform of the United Nations be measured according to how far we go towards meeting the objectives of the Organization as set out in the Charter, rather than against extraneous factors such as the money that major contributors may save by abolishing mandates.

The President: The next speaker is the representative of Iraq, to whom I give the floor.

Mr. Al Bayati (Iraq) (*spoke in Arabic*): My delegation would like to thank you, Mr. President, for having convened this meeting. We are sure that, thanks to your experience and your wisdom, the outcome will be successful. I should also like to thank Mr. Nicolas Michel and Judge Rosalyn Higgins for their contributions.

No one doubts that the subject for today's discussion — which relates to strengthening international law in conflict and post-conflict situations, ending impunity and enhancing the efficiency and credibility of United Nations sanctions regimes — involves themes that are all interconnected. In fact, it is difficult to address one without dealing with the others. The rule of law requires the prosecution and punishment of criminals, in particular the perpetrators of crimes against humanity. It also requires that we tighten measures against impunity as well as sanctions regimes, particularly those targeting entities and individuals, in order to guarantee justice and to compensate victims. In that way we can end impunity for individuals and entities, especially the perpetrators of grave crimes against humanity.

When we talk about the rule of law, including the observance of human rights, we also need to talk about terrorist acts, from which people and Governments have greatly suffered in recent years. Such acts constitute one of the most serious challenges facing humankind. My country is at the forefront in the international struggle against terrorism. My Government is making every effort, with the support of the international community, to confront this phenomenon which affects all segments of our society and all aspects of our life, without any moral, legal or human limit being observed. Despite the intensification of terrorism and violence against my people and the kidnapping of diplomats, foreigners and Iraqi nationals, our State continues to strengthen its democratic institutions, consolidate the civil rights of its citizens and fortify the rule of law, because we are convinced that combating terrorism requires more democratic institutions and more rights. Our commitment to complete the political process and to establish our constitution within the time limits set out in Security Council resolution 1546 (2004) marks a turning point in our struggle to fight and eradicate terrorism.

Recently, the international community has been discussing ways to combat terrorism in order to finally eradicate it. Thus, it has drafted a number of international conventions on that subject. We hope to see the conclusion of a comprehensive convention against international terrorism, the holding of a high-level meeting to adopt a counter-terrorism plan of action and the establishment of an international counter-terrorism centre. All of these, once they become realities, will strengthen international law in the area of international peace and security.

The Security Council too has been discussing ways to fight terrorism as a threat to international peace and security. It has adopted a number of resolutions leading to the creation of several mechanisms requiring cooperation among Member States, including the Security Council Committees established pursuant to resolutions 1267 (1999), 1373 (2001), 1518 (2003) and 1540 (2004). The cooperation of States and international organizations with those Committees will undoubtedly assist international counter-terrorism efforts.

If justice is to be complete and effective, perpetrators of crimes against humanity and human rights violations must be prosecuted and brought to justice. Strengthening measures to end impunity will help to reduce the number of human rights violations and crimes against humanity, because the prosecution and punishment of those responsible for such crimes will deter others from doing likewise.

We in Iraq have made every effort to establish a criminal tribunal that respects the norms of international law and guarantees fair and transparent justice for the members of the former regime who have committed crimes against humanity and human rights violations. The United Nations, as an Organization that seeks to maintain international peace and security, and the Security Council in particular must support such steps, taken internationally to ensure the rule of law and to prosecute the perpetrators of crimes against humanity. Such steps reflect the importance of the Security Council's sanctions committees.

Here, my delegation would like to stress that the purpose of sanctions is to right wrongs and to change the behaviour of regimes that fail to comply with Security Council resolutions, not to unravel the social fabric of society. That is why sanctions target individuals and entities, not peoples and countries; hence the importance of the sanctions committees in action against individuals and entities. Sanctions must be jointly agreed, and they must be subjected to periodic review to update them and maximize their effectiveness and credibility.

We have a very good relationship with the Committees, particularly the Counter-Terrorism Committees established pursuant to resolution 1373 (2001), the 1267 Committee and the Committee established pursuant to resolution 1518 (2003) to track the financial assets of members of the former Iraqi regime. We have expressed our views to that Committee, particularly with regard to the listing and delisting of individuals and entities.

Finally, I wish to reiterate the point I made at the beginning of my statement: the three topics that we are discussing today are interlinked. The events that the world has witnessed recently have proved that fact, and we in Iraq have also experienced and been affected by it. The rule of law must put an end to impunity. Enhancing the credibility of sanctions regimes would assist greatly in the maintenance of international peace and security.

The President: The next speaker is the representative of the Bolivarian Republic of Venezuela, to whom I give the floor.

Mrs. Núñez de Odremán (Bolivarian Republic of Venezuela) (*spoke in Spanish*): The Bolivarian Republic of Venezuela thanks Denmark for the initiative to draft a non-paper on "Strengthening international law: rule of law and the maintenance of international peace and security" in the context of the Security Council (S/2006/367, annex), as well as for convening this open debate on the subject of that document. We also thank Mr. Michel and Judge Higgins for their valuable statements.

With regard to the topic of this debate, we consider it necessary to refer to Article 1 of the Charter of the United Nations, which provides that the United Nations, in order to maintain international peace and security, shall take

> "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment of settlement of international disputes or situations which might lead to a breach of the peace".

If we examine the scope of that Article, we can see that the competencies in this area extend to the whole Organization, including Member States. It is clear that conflict prevention and resolution necessarily involve the negotiation of multilateral agreements within the United Nations framework. That in turn has a positive impact on the strengthening of international public law and international peace and security. In that connection, Venezuela believes that the Security Council's action in this area should complement the General Assembly's leading role because of the Assembly's strengths as a deliberative, legislative, democratic and representative organ of the Organization.

Since the early 1990s, we have seen the Security Council spontaneously increase its powers in dealing with issues that, by their nature, could not be categorized as threats to international peace and security as stipulated in Article 39 of the Charter. Moreover, the Council's action in a number of cases has not been free of controversy. As a United Nations organ whose competencies are derived from the Charter — which was agreed among Member States and which serves as a constitutional framework for the Organization — the Security Council must act in strict conformity with the Charter in carrying out its functions. The Council's role in promoting

international law depends on its actions complying with the provisions of Chapter VII of the Charter.

Article 24 of the Charter does not necessarily provide the Council with the competency to address issues that correspond to the functions and powers of the General Assembly or of the Economic and Social Council — including the establishment of rules, legislation and definitions — since the Assembly has the main responsibility for the progressive development and the codification of international law. Therefore, the Council should avoid the practice of using its authority to impose legislative requirements on Member States or assuming powers that could be considered a usurpation of the Assembly's competencies.

Promoting the international legal order requires the firm commitment of States to comply rigorously with the rules and principles of international law in order to help strengthen international peace and security. Venezuela believes that the issue of strengthening the rule of law falls under the exclusive purview of Member States and their respective citizens. In that connection, we believe that in both conflict and post-conflict situations, the support that international organizations can give in this regard must be provided on the basis of the consent of the States affected and in the context of international cooperation, avoiding the imposition of external criteria that do not take the needs of those States into account. Such criteria ultimately violate fundamental rules and principles of international law — such as respect for sovereignty and non-intervention in the internal affairs of States — whose provisions Venezuela firmly promotes.

We are aware of the importance of preserving the rule of law when strengthening States' political and legal structures in a participatory democratic framework. To that end, respect for States' sovereignty — which, traditionally, resides with the people — is vital in the process of defining the political and legal framework of each and every nation, free from interference by any supra-national body. As long as international legality is respected, then international peace and security will be strengthened.

The Peacebuilding Commission was created to support, with the consent of the Member States concerned, national recovery efforts in post-conflict situations. In discharging its mandate, it must strictly adhere to the norms and principles enshrined in the Charter of the United Nations. The mandate of the Commission must not be misused — the Commission should have no other purpose than supporting efforts aimed at national recovery and sustainable development.

Peacekeeping operations clearly represent a valuable mechanism for the Organization in helping to resolve international conflicts. Venezuela is of the view that, in accordance with the Charter of the United Nations, the basis for the deployment of peacekeeping operations in the field must be the strict fulfilment of essential requirements in order to ensure their smooth functioning, such as the consent of the parties involved in the conflict and impartiality in the implementation of their mandates. A peacekeeping operation cannot assume the functions of a "peace-imposing" force. Moreover, peacekeeping personnel and troops must, without exception, fulfil their respective mandates in strict compliance with international law. In that regard, Venezuela supports Secretary-General Kofi Annan's policy of zero tolerance for all those who commit abuses when representing the United Nations.

Venezuela views the creation of the International Criminal Court as a milestone in the field of international criminal law. The Court's establishment provides a fairer and more equitable option than ad hoc tribunals, which are not provided for by the Charter of the United Nations or by any international treaty resulting from extensive negotiations among Member States, but are set up on the basis of a political decision on the part of the Security Council.

The establishment of the Court represents a step forward in the fight against impunity and in the prosecution of individuals accused of committing serious violations of international law. The fact that the international community can now count on a legal body that is independent in nature represents major progress in the development of international law. However, we are concerned by the attempts made to weaken it, such as the conclusion of bilateral immunity agreements for a number of countries. The Security Council must support the strengthening of the Court and should not accept any regime that provides for exemptions, which in turn would modify the spirit of the provisions of the Rome Statute.

Venezuela is of the view that sanctions are an important but exceptional mechanism that should be used to resolve situations that might endanger

international peace and security, once those mechanisms for the pacific settlement of disputes provided for under Chapter VII of the Charter of the United Nations have been exhausted. However, our country is concerned at the fact that, on a number of occasions, the Council has rushed to impose sanctions in situations that do not necessarily constitute a threat to international peace and security. The indiscriminate use of sanctions has had a negative impact on the people of the countries subjected to sanctions and on their human rights, in particular on their health and nutritional status, as well as on the physical well-being of women, children and the elderly.

The aim of sanctions should not be to punish the population. Sanctions regimes should have clearly defined objectives and should be imposed for a specific period of time, on the basis of legally sustainable principles, and should be lifted once their objectives have been met. Sanctions should be imposed only after diplomacy and negotiations fail to achieve the desired results in a situation where a threat exists to international peace and security. They should be imposed in accordance with the Charter and never preventively. Unfortunately, on a number of occasions the Security Council has had recourse to the provisions of Articles 41 and 42 of the Charter in too hasty a manner, before the mechanisms provided for the pacific settlement of disputes had been fully exhausted. That tendency must be curbed in order to strengthen the legitimacy of the Security Council.

Finally, Venezuela is concerned also at the fact that the Security Council is increasingly resorting to the practice of imposing sanctions on individuals allegedly involved in acts that threaten international peace and security. The problems pertaining to the listing and delisting of names on the lists drawn up by sanctions committees have still not been adequately resolved, nor do we have a suitable mechanism in place to ensure due process and appeals procedures for the individuals included on those lists. Our country is of the view that those steps go far beyond the provisions set out in the Charter of the United Nations governing the actions of the Security Council. Strictly speaking, the sanctions mechanism was established to be applied in cases of conflict between States, as is set out in Article 41.

In conclusion, we would like once again to express our appreciation for this opportunity to exchange views and in the Security Council, and we congratulate Denmark on the work it has done during its presidency for the month of June 2006.

The President: I thank the representative of Venezuela for her kind words.

The next speaker is the representative of Norway, to whom I give the floor.

Mrs. Juul (Norway): Norway deeply appreciated the initiative of the Danish presidency to focus on the Security Council's contribution to strengthening international law and to hold an open debate on this important issue. We welcome the discussion paper prepared by Denmark, which contains a list of very pertinent questions.

Our common aim to promote peace, security, development and well-being for all nations must be based on a world order respecting the rule of law in all international relations. The United Nations plays a leading role in shaping that order, particularly in maintaining peace and security. As the Security Council has the primary responsibility under the Charter for the maintenance of international peace and security, the task of disseminating respect for international law must be among its key priorities.

The Norwegian Government is dedicated to strengthening international law and enhancing respect for the role of the United Nations in the peaceful resolution of conflicts. In our view, the most important contribution to peace and reconciliation is support for a world order in which the use of force is regulated by international law.

The United Nations has a varied supply of tools at its disposal to take on a leading role in pre-conflict, conflict and post-conflict situations. Those resources must be applied in a coordinated manner so that the various bodies of the United Nations can work in the same direction.

As a member of the Peacebuilding Commission, Norway will contribute to a comprehensive strategy in which the enhancement of rule of law activities will play an important role. We foresee a mutually reinforcing role between the Security Council and the Peacebuilding Commission as regards the capacity of the United Nations to strengthen the rule of law in situations of conflict. The United Nations deserves our full support in carrying out complex peacekeeping operations. These raise particular challenges in cases of

rule of law vacuums. In such situations, the United Nations must act as standard-bearer.

Widespread impunity for perpetrators of grave international crimes represents an obstacle to reconciliation and is in itself a violation of international law. When national courts lack the capacity or the will to bring such perpetrators to justice, it is for the international legal order to provide mechanisms that support justice. That is why Norway participated actively in the establishment of the International Criminal Court (ICC) and exactly why the ICC should play a part in the maintenance of international peace and security. We expect the Security Council to play a major role in international efforts to end impunity, particularly through the ICC.

While the International Criminal Court has set high standards for protecting the rights of the individual, individually targeted sanctions imposed by the Council have fallen short in providing sufficiently reassuring access to justice. Norway favours the introduction of a delisting mechanism that can help correct the wrong in cases where people are placed on a sanctions list without just cause. Safeguarding the rule of law in this context will, in our view, also serve to increase confidence in the sanctions system as an important political measure to maintain peace and security. At the same time, the effectiveness of sanctions relies, to a significant extent, on their implementation without delay. We therefore appreciate renewed efforts by the Council to address problems in that context. Fairness and respect for human rights must guide the use of United Nations sanctions regimes, especially if they are to be effective in the long term.

The President: The next speaker inscribed on my list is the representative of Nigeria, to whom I give the floor.

Mr. Adekanye (Nigeria): I wish to express Nigeria's appreciation to you, Sir, for having convened this open debate under the item "Strengthening international law: rule of law and maintenance of international peace and security". I am, of course, aware that this is a follow-up to the Council's 2004 debate on the rule of law in conflict and post-conflict societies (see S/PV.5052).

The crucial role of the rule of law in society cannot be overemphasized. Without the rule of law there can be no order, and without order there can be no sustainable peace, stability or social and economic development. It is for that reason that the holding of this debate is of the utmost importance in the global quest for durable international peace and security.

Nigeria shares the view of the Secretary-General that the restoration and consolidation of the rule of law in conflict or post-conflict societies entails, inter alia, the strengthening of the rule of law and transitional justice in the wake of conflict; the articulation of a common language of justice for the United Nations; the provision of assistance based on international norms and standards; the identification of the role of United Nations peace operations with particular reference to the restoration of the rule of law; the assessment of national needs and capacities; support for domestic reform and constituencies; the recognition of the political context of the conflict, embracing integrated and complementary approaches; filling the rule-of-law vacuum; the development of national justice systems; the application of lessons learned from ad hoc criminal tribunals; and support for the role of the International Criminal Court.

Nigeria also supports the continued use of truth commissions and the vetting of public services to ensure that those associated with past abuses are punished appropriately. We further support the payment of reparations to victims of human rights abuses and the building up of a roster of experts in the field of assisting conflict and post-conflict societies to establish transitional justice processes, as well as the restoration of shattered justice systems and the rebuilding of the rule of law.

With regard to the ad hoc tribunals, Nigeria recognizes their importance in the administration of transitional justice and the entrenchment of the rule of law, particularly in preventing impunity and punishing crimes against humanity. Regrettably, tribunals such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are — understandably — very costly to maintain. In addition, such bodies are temporary in nature and are located in various parts of the world. There is therefore an urgent need for the international community to embrace and utilize the services of the permanent International Criminal Court. That will not only enhance the rapid codification of jurisprudence in the areas of international humanitarian law, international human rights law, international refugee law and, of course, international criminal law, but also

ensure certainty in terms of the availability of such institutions, as well as preserving their legacies. Accordingly, Nigeria calls on those States Members of the United Nations that have not yet done so to accede to the Rome Statute.

On enhancing the efficiency and credibility of United Nations sanctions regimes, Nigeria holds the view that sanctions should be applied only as a last resort. In that regard, sanctions should always be targeted and time-bound, and should be lifted once the objective has been achieved. Furthermore, sanctions should be applied in accordance with Article 50 of the Charter. The impact of sanctions both on the target and on third States, particularly the most vulnerable in society, should be assessed and remedied. Above all, the listing and delisting of individuals and entities on sanctions lists should follow due process. To that end, we stress the need for due consultation with Member States whose citizens or entities within their territories are to be included on a list. Member States should also be informed and consulted before persons or entities in their territories are included on a list. We wish to emphasize that a situation in which persons or entities are included on a list before the affected States are informed is against both the peremptory norms of fair trial and the principle of the rule of law. Nigeria is therefore opposed to any breach of those peremptory norms.

Nigeria also wishes to underscore the need for close collaboration among the Security Council, the General Assembly and the Economic and Social Council in the crucial task of facilitating the restoration and consolidation of the rule of law in conflict and post-conflict societies. In particular, we wish to stress the importance of close cooperation among the newly established Peacebuilding Commission, the Security Council, the Economic and Social Council and relevant United Nations agencies and civil society entities in post-conflict reconstruction efforts. The proper synchronization of all such efforts would ensure peace and stability in post-conflict situations. There is also a need to work closely with relevant regional and subregional bodies.

Finally, the restoration of the rule of law in the context of cultural and traditional settings in post-war situations is of the utmost importance. In order to achieve this, there is a need to avoid the imposition of externally imposed models and mandates. There is also a need for proper funding and an assessment of national judicial, economic and social requirements. In order to enhance the process, there is also a need for meaningful participation by the national Government, civil society and key national constituencies with a view to determining and identifying strategies to enhance the course of transitional justice and the restoration of the rule of law.

In this connection, Nigeria agrees with the view expressed by the Secretary-General in the summary of his report contained in document S/2004/616 that

> "Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach to the justice sector must be comprehensive in its attention to all of its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms. Our main role is not to build international substitutes for national structures, but to help build domestic justice capacities".

The President: Let me conclude the debate by expressing my gratitude for all of the inspiring and thoughtful statements made today. They lead me to conclude that we all share the wish to strengthen international law in our conduct.

After consultations among the members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

> "The Security Council reaffirms its commitment to the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world. The Council underscores its conviction that international law plays a critical role in fostering stability and order in international relations and in providing a framework for cooperation among States in addressing common challenges, thus contributing to the maintenance of international peace and security.

"The Security Council is committed to and actively supports the peaceful settlement of disputes and reiterates its call upon the Member States to settle their disputes by peaceful means, as set forth in Chapter VI of the Charter of the United Nations, including by use of regional preventive mechanisms and the International Court of Justice. The Council emphasizes the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States.

"The Security Council attaches vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace. The Council considers enhancement of the rule of law activities as crucial in the peacebuilding strategies in post-conflict societies and emphasizes the role of the Peacebuilding Commission in this regard. The Council supports the idea of establishing a rule of law assistance unit within the Secretariat and looks forward to receiving the Secretariat's proposals for implementation of the recommendations set out in paragraph 65 of the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The Council urges Member States which are interested in doing so to contribute national expertise and materials to these developments within their means, and to improve their capacities in these areas.

"The Security Council emphasizes the responsibility of States to comply with their obligations to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law. The Council reaffirms that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians and to prevent future such abuses. The Council intends to continue forcefully to fight impunity with appropriate means and draws attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and 'mixed' criminal courts and tribunals and truth and reconciliation commissions.

"The Security Council considers sanctions an important tool in the maintenance and restoration of international peace and security. The Council resolves to ensure that sanctions are carefully targeted in support of clear objectives and are implemented in ways that balance effectiveness against possible adverse consequences. The Council is committed to ensuring that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions. The Council reiterates its request to the 1267 Committee to continue its work on the Committee's guidelines, including on listing and delisting procedures, and on the implementation of its exemption procedures contained in resolution 1452 (2002) of 20 December 2002."

This statement will be issued as a document of the Security Council under the symbol S/PRST/2006/28.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 4.55 p.m.